



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 767022570

OR2004-3134

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 199600.

The City of Waco Police Department (the "department") received a request for information relating to any incidents reported by the requestor from a specified address and any reports involving the requestor. You state that portions of the requested information will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information in Exhibits 3 and 4 pertain to pending criminal prosecutions and pending investigations. Based on your representation and our review of the submitted information in Exhibits 3 and 4, we determine that release of some of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is

applicable to the information you seek to withhold in the following reports: 01-083958, 01-038266, 01-037920, 02-051455, 02-069272, and 03-065349.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Basic information normally includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, one of the offense reports you have submitted, 01-037920, contains information about an alleged sexual assault. Normally, information tending to identify a sexual assault victim is private information that must be withheld. Gov't Code § 552.101 (excepts information made confidential by law, either constitutional, statutory, or by judicial decision, and encompasses common-law privacy); see *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this case, the requestor is the victim of the alleged sexual assault. Therefore, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise private because the requestor is the complainant. Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Thus, with the exception of the basic front page offense report information, including the identification of the complainant and a detailed description of the offense, the rest of the submitted information in offense report numbers 01-083958, 01-038266, 01-037920, 02-051455, 02-069272, and 03-065349 that is encompassed by the department's section 552.108 claim is excepted from disclosure under section 552.108(a)(1).

As for report numbers 99-016497, 99-035762, and 00-017425, the department also asserts that they relate to pending criminal investigations and that their release would interfere with the detection, investigation, or prosecution of crime. However, upon careful review it appears to this office that the applicable statutes of limitations have expired. See Code Crim. Proc. art. 12.02; see also Penal Code §§ 22.01, 28.03, 42.07. You have neither informed this office that any criminal charges were filed within the limitations period nor have you otherwise explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108(a)(1) to the information that the department seeks to withhold in these offense reports, we conclude that the department may not withhold the information at issue under section 552.108.

However, the remaining submitted information contains Texas driver's license numbers. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, we agree that the department must withhold the Texas driver's license information you have marked along with the additional information we have marked pursuant to section 552.130 of the Government Code.

Finally, you have marked social security numbers that you assert may be withheld under federal law. Section 552.101 of the Government Code encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers in the remaining submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the department should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that: 1) with the exception of the basic offense and arrest information, you may withhold the information you seek to withhold in offense report numbers 01-083958, 01-038266, 01-037920, 02-051455, 02-069272, and 03-065349 based on section 552.108 of the Government Code¹; 2) you must withhold the section 552.130 information you have marked along with the additional information we have marked; and 3) the social security numbers you have marked may be confidential under section 552.101 in conjunction with federal law. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

¹ As our ruling on this information is dispositive, we do not address your section 552.103 argument for the information relating to offense report numbers 01-083958, 01-038266, and 01-037920.

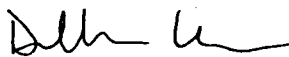
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 199600

Enc. Submitted documents

c: requestor
(w/o enclosures)